NOTES OF CASES.

Acknowledgment—Validity When Taken by De Facto Officer.—In Holland *v.* Stubblefield, 206 S. W. 459, the Kentucky Court of Appeals held that a deputy county clerk who was not reappointed during principal's second term, but he continued to act as deputy with knowledge and acquiescence of principal of public in general, and was a "de facto officer," and acknowledgment to deed taken before him was valid, and deed was recordable; parties having no knowledge, actual or constructive, of deputy's disability.

The court said: "In holding that the deed was not a recordable instrument, the circuit court followed the case of Smith *v.* Cansler, 83 Ky. 367, where it was held that one who had been a deputy clerk in the county during the first term of the clerk, and who continued to act as such without reappointment after his principal had entered on his second term, was not a de facto officer, and that an acknowledgment taken before him was not valid. Of course, if this rule be sound, it disposes of the question under consideration, but in view of the fact that it is not supported either by authority or reason, we conclude that it should no longer be adhered to. The error of the court in that case naturally grew out of its erroneous assumption that the deputy clerk was not an officer de facto. It is unnecessary to give all the states of case in which an officer may be regarded as a de facto officer, but it is sufficient to say that an officer who holds over after his term of office has expired and continues to perform the duties of the office with the acquiescence of the public is generally regarded as a de facto officer. People *v.* Beach, 77 Ill. 52; Williams *v.* Boynton, 147 N. Y. 426, 42 N. E. 184; State *v.* McJunkin, 7 S. C. 21

"This principle was clearly recognized in the case of Wilson *v.* King, 3 Litt. 457, 14 Am. Dec. 84. In that case was involved the validity of a bond taken by a deputy sheriff after he had accepted a commission as justice of the peace of the county and had performed many of the duties pertaining to the latter office. Although it was held that the offices of deputy sheriff and justice of the peace were incompatible, and the acceptance of the latter vacated the former, the court further held that, inasmuch as the incumbent continued also to exercise the office of deputy sheriff and was so recognized by the court and others, he was a de facto deputy sheriff, and his acts as such were binding on the public and third parties.

"In the case under consideration the county clerk had power to appoint a deputy with power to take acknowledgments. The appointment was made during the first term of the clerk. No new appointment was made by the clerk after his election for the second term, but the deputy continued to act as such with the approval of

his principal and with the acquiescence of the public. There can be no doubt, then, that the deputy clerk was a de facto officer.

"With that question decided we are then confronted by the well established rule that there is no distinction in law between the official acts of an officer de jure and those of an officer de facto. So far as the public and third parties are concerned, the acts of the one have precisely the same force and effect as the acts of the other (1 R. C. L., § 40, p. 268). Indeed, the doctrine has been carried to the extent of holding that the acts of a circuit judge, holding office under an unconstitutional act, were valid as to the public and third parties until the act was declared unconstitutional (Nagel *v.* Bosworth, Auditor et al., 148 Ky. 807, 147 S. W. 940). The same rule was applied to the acts of municipal officers holding office under a void statute (Wendt *v.* Berry, 154 Ky. 589, 157 S. W. 1115). There is every reason why the same rule should apply to acknowledgments upon which depend the validity of titles and the security of property rights. Following this rule, we held in Sousley *v.* Citizens' Bank of Nepton (168 Ky. 150, 181 S. W. 960) that a notary who held himself out as such, and in good faith continued to execute the duties of his office after his commission had expired, was a de facto officer, and an acknowledgment taken before him was valid. Indeed, any other view of the law would place upon the public the burden in every instance of ascertaining the authority of those persons empowered to take acknowledgments, and would probably invalidate thousands of titles which the parties had every reason to believe were valid in every respect. Here the contracting parties did not know of the officer's disability, and there was nothing in the surrounding circumstances to apprise them of that fact. We therefore conclude that the acknowledgment was valid. 1 R. C. L. § 40, p. 268; Macey *v.* Stork, 116 Mo. 481, 21 S. W. 1088; Old Dominion Building, etc., Association *v.* Sohn, 54 W. Va. 102, 46 S. E. 222; Prescott *v.* Hayes, 42 N. H. 56; Brown *v.* Lunt, 37 Me. 423."

Municipal Corporations—Ordinance Regulating Closing Hours of Places of Business.—In Ex parte Harrell, 79 So. 166, the Supreme Court of Florida held that a municipal ordinance requiring, under penalties of fine and imprisonment, all places of business to be closed at 6:30 o'clock p. m., where goods, wares, and general merchandise are kept for sale, is void, because the same is an unreasonable and unwarranted governmental interference with the personal rights of the merchant class of the citizens.

The court said: "It is contended that under the general welfare clause of the city's charter, authorizing it to enact all ordinances that tend to conserve the public health, public morals, the public safety,